Himachal Pradesh University. ....Respondent.

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The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting?

For the Appellant: Mr.J.S. Bhogal, Sr. Advocate with
Mr.Suneet Goel, Advocate.

For the Respondent: Mr. V.D. Khidtta, Advocate.

Deepak Gupta, J:

This appeal under Section 39 of the Arbitration Act, 1940 raises a short, but interesting question.

The admitted facts are that the appellant was given work of construction of out door stadium by the respondent-University. Agreement No.2 of 1989-1990 was executed between the parties in this regard. This agreement was entered into on 11.4.1989 and the work was to be completed within a period of 18 months thereafter.

Whether reporters of local Papers may be allowed to see the judgment?

Solan as an Arbitrator. The Arbitrator passed as award dated 20.7.1995, awarding a sum of Rs. 2,70,512/- in favour of the contractor. Out of this, Rs. 1,10,011/- had been awarded on account of escalation in the minimum wages of the labour. The Arbitrator held that the contract amount should be increased on account of the statutory increase in the minimum wages duly notified by the State Government.

The respondent-University challenged the award by filing objections under Sections 30 and 33 of the Indian Arbitration Act, 1940. The objections were initially filed in this court, but due to the pecuniary jurisdiction being enhanced, the matter was transferred to the court of District Judge, Shimla. Though various grounds were raised, but during the course of arguments, only one objection was pressed that since the contractor had not intimated the Engineer-in-charge with regard to the increased wages within a reasonable time, he was not entitled to any amount under Clause 10C.

The learned District Judge on construction of Clause 10C of the Agreement held that before claiming an increase, it was incumbent

I have heard Shri J.S. Bhogal, learned Senior Advocate, appearing on behalf of the contractor and Shri V.D. Khidtta, learned counsel for the respondent-University.

Mr. Bhogal submits that the increase in the minimum wages made by the Government is a statutory increase, duly notified by the State Government under the Minimum Wages Act, 1948. He contends that such a statutory notification is for the knowledge of all persons and as such, no specific notice was required to be given in the facts and circumstances of the case. On the other hand, Mr. Khidtta, has supported the reasoning and judgment of the learned District Judge.

Clause 10C which is the bone of contention reads as follows:-

> "CLAUSE 10C- If during the progress of the works, the price of any material incorporated in the works, (not being a material supplied from the Engineer-in-charge's stores in accordance with clause 10 hereof) and/or wages of labour increases as a direct result of the coming into force of any fresh law, or statutory rule or order (but not due to any changes in sales tax) and such increase exceeds ten percent of the price and/or wages prevailing at the time for acceptance of the tender for the work, and the contractor thereupon necessarily and properly pays in

from the Engineer-in-charge's stores in accordance with clause 10 hereof) and/or wages of labour is decreased as a direct result of the coming into force of any fresh law or statutory rule or order (but not due to any changes in sales tax) and such decrease exceeds ten percent of the prices and/or wages prevailing at the time of acceptance of the tender for the work, H.P. University shall in respect of materials incorporated in the works (not being material supplied from the Engineer-in-charge's stores in accordance with clause 10 hereof) and/or labour engaged on the execution of the work after the date of coming into force of such law statutory rule or order be entitled to deduct from the dues of the contractor such amount as shall be equivalent to difference between the prices of materials and/or wages as they prevailed at the time of acceptance of tender for the work minus ten per cent thereof and the prices of materials and/or wages of labour on the coming into force of such law, statutory rule or order.

The contractor shall, for the purpose of this condition, keep such books of account and other documents as are necessary to show the amount of any increase claimed or reduction available and shall allow inspection of the same by a duly authorized representative of H.P. University, and further shall, at the request of the Engineer-in-charge furnish, verified in such a manner as the Engineer-in-charge may require, any

11.4.1989 and the work was to be completed within 18 months. This work was admittedly to be completed within the stipulated period. The notifications with regard to the increase were issued on 15.4.1989 and 25-1-1990. The Arbitrator on the basis of the accounts kept by the that contractor and produced before the Arbitrator, came to the conclusion that the contractor had in fact paid the increased wages to the labour employed by him. In fact this was a statutory duty cast upon the contractor to pay enhanced wages as per the Minimum Wages Act.

Admittedly, in the present case, the contractor during the period of contract had not given notice to the Engineer-in-charge about the increase in wages. However, as is apparent from the perusal of the record produced before the Arbitrator, the notification was a statutory notification, issued under the Minimum Wages Act. These notifications were applicable to all the employees including the employees of the University. These increased wages had admittedly been paid by the contractor to his labour. There is no reason why the contractor should be deprived of the amount, which was paid by him under a validly issued notification which was binding upon him. The Arbitrator decided

Each case has to be decided in its own peculiar facts. Normally, the notice of increase must be given by a contractor. However, in the present case, the increase in wages is a statutory increase made by the Government and duly notified by issuing notifications in the Gazette. These notifications are deemed to be public notices. The Engineer-in-charge cannot feign ignorance of these notices. Further as pointed out above, in this case, the contract was executed within the stipulated period. A reading of the first portion of Clause 10C clearly stipulates that a contractor is entitled to the increased wages and the contract has to be modified accordingly, unless in the opinion of the Vice Chancellor whose decision shall be final and binding, the increase is attributable to delay in the execution of the contract within the control of the contractor. Admittedly, there is no delay in execution of the contract. The notifications were issued on 15.4.1989 and 25.1.1990 during the pendency of the contract. The Arbitrator rightly found that this amount was payable to the contractor.

The scope of interference under Section 30 and 33 of the Indian Arbitration Act, 1940 is very limited. It could not be said that the

Rs.1,10,011/- as increased wages, even though no notice had been given since the increase was a statutory increase, to the knowledge of all, including the Engineer-in-charge.

In view of the above discussion, the appeal is allowed. The order and decree of the learned District Judge, Shimla in Arbitration case No.11-S/1 of 1997/1996 is set-aside and the award of the Arbitrator is restored.

April 13, 2006. **(Deepak Gupta).**
(Pds) **Judge.**